

USSA Legal Professional Development

November 2, 2009 - Michelle Beus

- I. Considerations in Working with School Resource Officers
Suggestions for creating positive working relationships between school staff, SROs, and students.
- II. Student Drug Testing - Random-Suspicionless Testing in Extra-Curricular Activities
To test or not to test? Issues to consider prior to implementing a program.
- III. Extra-curricular Activities - Private v. School Sponsored
Which activities are subject to fee waiver provisions and place the district in a position of liability for injuries or damage?

I. Considerations in Working with School Resource Officers

A. Put it in writing!!

Having a written Memorandum of Understanding (MOU) is an important step in creating a successful SRO program. The MOU should go beyond addressing who pays the wages of the SRO. It must address hiring, duties, record sharing, supplies, chain of command, training, etc. A model of the basic provisions used by Davis School District has been included for reference.

B. Jointly train administrators and SROs.

Personnel changes occur every year. Sometimes it is the administration, sometimes the SRO. Annual joint training brings parties from both the school and law enforcement community together to help each gain a better understanding of the laws and policies the other party is working under. Once each party sees the parameters the other side is working under, the two sides can coordinate their efforts and more clearly define roles and expectations.

C. Make the SRO part of the team.

There are distinct differences between school administration and law enforcement. Each comes from a different training background and each has very different authority and goals. An SRO is a law enforcement officer with the authority to make arrests and initiate action in the justice system. The authority of school personnel is limited to administrative actions related to the school system. But the two share a common goal of maintaining a safe school environment for staff, students, and visitors. While these differences require each to follow very specific procedures in working with students, working side by side, the two can lend great support in creating a safe and welcoming school environment.

Don't expect your SRO to take on the role of a school administrator. Instead, make them a part of your administrative team and recognize and respect their unique role. Include them in faculty meetings, staff communications, school community council meetings, etc. Show the staff and students your SRO is part of your team by providing them a visible physical location or office to work from. Even seemingly simple things like including the SRO on your school's web page helps bolster their credibility and recognition in the school community.

II. Student Drug Testing

Random-Suspicionless Testing in Extra-Curricular Activities

The United States Supreme Court ruled that the random, suspicionless drug testing of students choosing to participate in extra-curricular activities did not violate the Fourth Amendment prohibition against unreasonable governmental searches. Before a district jumps into the fray, the policy ruled on by the Court should be examined. The basics of the policy in the *Earls* case:

All middle and high school students must consent to urinalysis testing for drugs in order to participate in any extracurricular activity.

In practice, was applied only to competitive extracurricular activities sanctioned by the high school activities association which included Academic Team, Future Farmers of America, Future Homemakers of America, band, choir, pom pon, cheerleading, and athletics.

Students were required to submit prior to participation, random testing while participating, and at any time upon reasonable suspicion.

Testing was for illegal drugs, including amphetamines, marijuana, cocaine, opiates, and barbituates, not medical conditions or the presence of authorized prescription medications.

A faculty monitor waits outside the closed restroom stall for the student to produce a sample and must listen for the normal sounds of urination in order to guard against tampered specimens and to insure an accurate chain of custody.

The monitor then pours the sample into two bottles that are sealed and placed into a mailing pouch along with a consent form signed by the student.

Test results are kept in confidential files separate from a student's other educational records and released to school personnel only on a need to know basis.

Test results are not turned over to any law enforcement authority. Nor do the test results here lead to the imposition of discipline or have any academic consequences.

- First positive result, the school contacts the parent or guardian for a meeting. The student may continue in activity if within five days of the meeting, the student shows proof of receiving drug counseling and submits to a second test in two weeks.
- Second positive result, student is suspended from participation in all extracurricular activities for 14 days, complete four hours of substance abuse counseling, and submit to monthly drug test.
- Third positive result, suspended from participation in any extracurricular activity for the remainder of the school year, or 88 days, whichever is longer.

Court said method of collection was minimally intrusive and use of test results was limited - therefore, invasion of students' privacy was not significant.

District's governmental concern was legitimate: "preventing drug use by schoolchildren."

School presented specific evidence of drug problem. Court said don't need to show specific problem, but doing so makes argument for special need stronger.

Given the nationwide epidemic of drug use, and the evidence of increased drug use in their own schools, it was entirely reasonable for the School District to enact this particular drug testing policy.

Under the parameters reviewed by the Court - random-suspicionless drug testing is allowed. However, it is a bit like black fingernail polish – it's out there! But that doesn't mean everyone should wear it!! Before you decide whether random/suspicionless drug testing is for your, consider the following:

- ☐ What are you trying to accomplish by implementing drug testing?
- ☐ Will drug testing be a good solution for your students?
- ☐ Will your community support drug testing?
- ☐ How will you know if your program is effective?
- ☐ What is the “special need” supporting the testing program?
 - ☒ *To deter and prevent drug use among students has been viewed as a legitimate special need.*
- ☐ What type of testing will be used: random-suspicionless, suspicion-based, or voluntary?
- ☐ Which students will be tested for drug use?
 - ☒ *Students participating in extracurricular activities have a lessened expectation of privacy because they voluntarily subject themselves to occasional off-campus travel, communal undress, and additional rules and requirement for participating that do not apply to the student body as a whole.*
- ☐ What is the process for selecting the students?
- ☐ What drugs will you be testing for?
 - ☒ *A wide variety of tests are available. The most common is a 5-panel screen for marijuana, PCP, opiates, amphetamines and cocaine. Tests are available for steroids, nicotine, alcohol, and other drugs, but these tests are much more costly.*
- ☐ Who will conduct the test and how will it be conducted?
 - ☐ Who will supervise the collection of the sample? Who will read and interpret the test?
- ☐ What are the consequences of a positive drug test?
 - ☒ *Most testing advocates and the program reviewed by the Supreme Court advocate that the purpose of drug testing is deterrence, not punishment. Students are often referred for intervention but not subjected to suspension or expulsion and no referrals are made to law enforcement.*
- ☐ Are there clearly articulated measures for helping students who test positive for drugs?
- ☐ Will a second test be performed to confirm results?
- ☐ How will you pay for the tests?
 - ☒ *Costs vary greatly depending on the type of test used and the drugs being screened for. A common 5-panel test can cost as low as \$15 and a test for steroid use can be as much as \$200.*
- ☐ Are test results cumulative throughout a student's tenure at the school, or is the slate wiped clean every year?
- ☐ What happens if a student refuses to take the test? Will refusal be construed as a positive result?
- ☐ Who will see the results?
- ☐ How will parents be informed about positive test results?
- ☐ How does a student challenge the results of a positive test result?
- ☐ What mechanism is in place for students whose prescription medication triggers a positive reading?

Opinions vary regarding the efficacy of student drug testing programs and both sides rely on anecdotal data and student self-reporting to bolster their point of view. Opponents argue testing is not effective in deterring drug use, it is an expensive and unwise use of limited education dollars, can be legally risky, may undermine relationships of trust in the school environment, and may drive students away from extracurricular activities which are a proven means of helping students stay out of trouble with drugs. Proponents claim that testing programs act as a deterrent, provide students with an excuse not to use drugs, school and learning environments improve, test scores and graduation rates improve, and students recognize and acknowledge that schools care about their choices.

III. Extra-curricular Activities - Private v. School Sponsored

Which activities are subject to fee waiver provisions and place the district in a position of liability for injuries or damage?

Under Utah law and State Board of Education Rules, “school sponsored” activities, even if they are voluntary and occur outside of the regular school day, are subject to fee waiver requirements. The most common example of these types of activities are athletic programs, cheerleading, and drill teams. Where the activity is school sponsored or sanctioned, expenditures for the activities, including uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations are fee waiver eligible.

Additionally, in these instances, the school is liable to take all reasonable precautions to make sure the activity is appropriately supervised and student safety is maintained.

Confusion arises when a coach or club sponsor arranges for an activity which has not been “officially” approved or may be scheduled to occur over a holiday or during the summer months. The school employee may be receiving monetary compensation or other remuneration for enrolling students in the program or even assisting in the operation of the program. These may include travel opportunities, camps, or clinics. Three main issues arise in this context:

- Is the employee’s involvement ethically appropriate?
- Is student participation in the activity subject to fee waivers?
- Is any injury or harm that may occur to a student or the employee going to create liability on the part of the district?

Utah Admin. Rule R277-107. Educational Services Outside of Educator's Regular Employment provides a clear list of requirements that an employee must follow in order to keep an activity private rather than school sponsored. Many of these same factors are used to determine whether fee waivers apply and whether liability will attach to the district.

- Does the employee make clear to parents and students that the activity is not part of their employment with the school?
- Does the employee promote or advertise the activity at school? During class? During practices or tryouts?
- Does the employee contact students at school?
- Does the employee use school time to discuss, promote, or prepare for the activity?
- Does the employee access student information (home address, phone, class schedule) that would not be available to any other member of the public?
- Does the employee state or imply that participation will result in credit being awarded to the student?
- Does the employee state or imply that participation in the activity is a requirement to participation in a regular school activity or program?
- Is money collected at school? Checks made out to school? Run through school accounts?
- Is a school discount used to purchase supplies or make travel arrangements?
- Are students who are not part of a school sponsored team or club allowed to participate in the activity?
- Are school uniforms and/or equipment used at the activity?

Whether an activity will be considered “school sponsored” and therefore subject to fee waivers and liability on the part of the school is a fact specific balancing act. The overall question should be: **“In viewing the activity as a whole, including organization and recruiting, would a reasonable parent see the activity as being sponsored by the school?”**

MODEL INTERLOCAL AGREEMENT
SCHOOL RESOURCE OFFICERS

THIS AGREEMENT made and entered into this _____ day of _____, 20__, by and between the BOARD OF EDUCATION OF _____ SCHOOL DISTRICT, of _____ City, _____ County, State of Utah, (hereinafter referred to as the "School District"), and _____ CITY CORPORATION, _____, _____ County, State of Utah, (hereinafter referred to as "City"), as follows:

RECITALS

- I. The District is a School District organized and existing pursuant to and in accordance with the Constitution and statutory laws of the State of Utah.
- II. The City is a Municipal Organization organized and existing pursuant to and in accordance with the Constitution and statutory laws of the State of Utah.
- III. The District owns educational facilities and provides educational services to children residing within the boundaries of Davis County.
- IV. The City employs trained law enforcement officers qualified to act as School Resource Officers (SROs).
- V. The District has need for SROs to perform law enforcement related services in connection with it's facilities and programs.
- VI. The City and the District are desirous of entering into an Interlocal Cooperation Agreement for their mutual benefit and for the further purpose of more efficiently and effectively providing SROs on District property and in connection with District programs.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions as hereinafter set forth, the District and the City hereby agree as follows:

1. **DURATION OF AGREEMENT**

This Agreement shall continue and remain in full force and effect perpetually unless terminated by the mutual consent of both parties or terminated in accordance with the termination provisions contained herein.

A. **Annual Review of Costs and Services**: Parties representing each entity shall meet annually to review the continued applicability of the provision of services and the associated

reimbursements outlined in this Agreement. District funding for the payment of SROs is derived from state and federal funding. Due to the nature of the funding source, any increase in the District's portion of the costs of this Agreement shall be guided by the increase in funding which the District receives for the following fiscal year.

B. Date of Review: The annual review discussed above shall commence no later than January 15th of each calendar year with final decisions to be reached no later than April 1st of each calendar year.

C. Representatives: Parties representing each entity shall meet to conduct the Review.

D. Annual Review Addendum: The results of the Annual Review shall outline any changes to services or reimbursement and a copy of each Annual Review shall be given to each of the parties and attached to and incorporated into this Agreement as an Addendum with the date of applicability corresponding with the fiscal year of the District.

2. NO SEPARATE ENTITY

This Agreement shall not create any separate legal or administrative entity for the purpose of implementing or administering the terms and conditions of this Agreement.

3. PURPOSE

The purpose of this Agreement is to provide a legal means for the parties to more efficiently and effectively provide SROs to District facilities and programs to accomplish the following:

A. To foster educational programs and activities that will increase students' knowledge of and respect for the law and the function of law enforcement agencies;

B. To encourage SROs to attend extra-curricular activities held at schools, when possible, such as PTA meetings, athletic events and concerts;

C. To maintain a safe and secure environment on District facilities and at District programs by acting swiftly and cooperatively when responding to major disruptions and flagrant criminal offenses at school, such as: disorderly conduct by trespassers, the possession and use of weapons on campus, the illegal sale and/or distribution of controlled substances;

D. To report serious crimes that occur on campus and to cooperate with the law enforcement officials in their investigation of crimes that occur at school;

E. To cooperate with law enforcement officials in their investigations of criminal offenses which occur off campus; and

F. To encourage SROs to provide traffic control and enforcement at schools when deemed necessary for the safety and protection of students and the general public.

4. EMPLOYMENT AND ASSIGNMENT OF SCHOOL RESOURCE OFFICERS

A. The City shall employ six (6) SROs during the term of this Agreement as follows:

_____ High School - One full-time SRO;

_____ High School - One full-time SRO;

_____ Junior High School - One part-time SRO (22 hours per week);

_____ Junior High School - One part-time SRO (22 hours per week);

_____ Junior High School - One part-time SRO (22 hours per week); and

_____ Junior High School - One part-time SRO (22 hours per week).

B. SROs shall at all times remain employees of the City and shall be subject to the administration, supervision and control of the City, except as outlined in this Agreement.

C. The City, in its sole discretion, shall have the power and authority to hire, discharge and discipline SROs. The City shall hold the District free, harmless and indemnified from and against any and all claims, suits or causes of employment practices brought by SROs.

D. In the event an SRO is absent from work, the City agrees to make reasonable efforts to assign a substitute SRO to provide necessary services to that campus during the regularly assigned SRO's absence.

E. Special Events occur from time to time beyond the control of the City which may require the City to temporarily remove the School Resource Officers from the 6 schools as listed in section 4.A. above without replacing the officers for the duration of the Special Event. In such inntance, the City will respond to emergency situations or criminal acts in a reasonable manner.

5. BASIC QUALIFICATIONS OF SCHOOL RESOURCE OFFICERS (SROs)

To be assigned as a SRO, an officer must first meet all of the following basic qualifications:

A. Shall be a commissioned officer and should have two years of law enforcement experience

B. Shall possess a sufficient knowledge of the applicable Federal and State laws, City and County ordinances, and Board of Education policies and regulations as applicable to SROs;

- C. Shall be capable of conducting in-depth criminal investigations;
- D. Shall possess even temperament and set a good example for students; and
- E. Shall possess communication skills which would enable the officer to function effectively within the school environment.

6. DUTIES OF SCHOOL RESOURCE OFFICERS

- A. To protect lives and property for the citizens and public school students of the County;
- B. To enforce Federal, State and Local criminal laws and ordinances, and to assist school officials with the enforcement of Board of Education Policies and Administrative Regulations regarding student conduct;
- C. Shall not enforce school regulations. Infractions of school rules should be handled at the school level. SRO's should be available to the school for advice, assistance, and consultation. School administrators should handle issues that are the exclusive concern of school officials and do not constitute a violation of the law;
- D. To investigate criminal activity committed on or adjacent to school property;
- E. To counsel public school students in special situations, such as students suspected of engaging in criminal misconduct, when requested by the principal or the principal's designee or by the parents of a student;
- F. To answer questions that students may have about Utah Criminal or juvenile laws;
- G. To assist other law enforcement officers with outside investigations concerning students attending the school(s) to which the SRO is assigned;
- H. To provide security for special school events or functions at the request of the principal or the principal's designee;
- I. To provide traffic control during the arrival and departure of students when necessary;
- J. To notify his/her immediate supervisor, the School Safety Coordinator and the school principal or the principal's designee when absent from work due to illness, training vacation, or an agency emergency;
- K. To notify his/her immediate supervisor and the School Safety Coordinator of any event that could cause media representatives to inquire about a newsworthy incident;

L. To submit all incidents and arrest reports to the SRO's agency according to their departmental policy;

M. To maintain communications with supervisors, school administration, and school safety personnel through assigned radios, pagers, voice-mail, and cellular phones. Voice-mail should be checked each working day for any broadcast messages;

N. To assist the administration and faculty in formulating criminal justice programs if implemented in the assigned school;

O. To formulate educational crime prevention programs designed to reduce the opportunity for crimes to occur

P. May participate in parent, teacher, and student meeting when appropriate;

Q. May participate in campus activities, student organizations, and athletic events when feasible; and

R. To assist their agency, other law enforcement agencies, and other SROs with investigations concerning students attending the SRO's assigned school.

7. CHAIN OF COMMAND

As employees of the CITY, SROs shall follow the chain of command as set forth in the _____ City Police Department Policies and Procedure Manual. In the performance of their duties, SROs shall coordinate and communicate with the principal or the principal's designee of the school to which they are assigned.

8. TRAINING/BRIEFING

Training of SROs for the purpose of maintaining their law enforcement certification shall be at the direction of the CITY. The DISTRICT may also provide training in Board of Education Policies, regulations and procedures.

9. DRESS CODE

Dress for the SRO will be the uniform of the day, as set forth by the SRO's agency.

10. SUPPLIES AND EQUIPMENT

The City agrees to provide each SRO with the following equipment:

A. Motor vehicles. The City shall provide a standard patrol vehicle for each SRO. In addition, the City agrees to provide all maintenance for such vehicles and purchase and maintain

comprehensive general auto liability insurance on the said vehicles in an amount not less than the coverage recommended by the Risk Manager for the City.

B. Weapons and ammunition. The City agrees to provide the standard issue pistol and rounds of ammunition for each SRO.

C. Office Supplies. The City agrees to provide each SRO with the usual and customary office supplies and forms required in the performance of their duties.

D. Communication. The City agrees to provide SROs with the necessary communication equipment.

11. DUTY HOURS

Specific SRO duty hours at a particular school shall be set by mutual agreement between the City and the principal or the principal's designee of the school to which the SRO is assigned.

12. INVESTIGATION, INTERROGATION, SEARCH AND ARREST PROCEDURES

The protections afforded an individual suspected of wrongdoing are different for law enforcement officials than for school administrators. It is the responsibility of the SRO to assure that his/her actions regarding involvement in investigations complies with the applicable standards to assure any evidence obtained is admissible in a court of law. SROs shall notify the school principal or the principal's designee before removing a student from campus. The principal or the principal's designee shall follow the standards outlined in District Policy.

13. ACCESS TO EDUCATION RECORDS

A. SROs shall be designated as "law enforcement units" for the purposes of school records as required by the Family Educational Rights and Privacy Act, 20 USCA § 1232g (FERPA). Schools may freely share information about students with their SROs for the purpose of maintaining safe schools.

B. Records or files which the SRO creates and maintains for a law enforcement purposes rather than school disciplinary purposes are not student education records and are not protected by FERPA. These law enforcement unit records may be disclosed to third parties without parental consent.

C. Law enforcement officials other than the SRO may inspect and copy any public records maintained by the school including student directory information such as yearbooks.

However, these law enforcement officials may not inspect and/or copy confidential student education records except in emergency situations.

D. If information in a student's cumulative record is needed in an emergency to protect the health or safety of the student or other individuals, school officials may disclose to other law enforcement officials that information which is needed to respond to the emergency situation based on the seriousness of the threat to someone's health or safety; the need of the information to meet the emergency situation and the extent to which time is of the essence

E. If confidential student records information is needed, but no emergency situation exists, the information may be released to other law enforcement officials only upon the issuance of a search warrant or subpoena to produce the records.

14. LIABILITY AND INDEMNIFICATION

The School District and the City shall each be responsible for conducting of their respective activities provided for and contemplated herein, and each waives all claims and resources against the other in connection with any claim arising out of or connected with the conduct of any of the activities contemplated by this Agreement, including the right to contribution for loss or damage by reason of injury to persons or damages to property arising out of or in any way connected with or incident to the activity of such party as contemplated by this Agreement. Furthermore each party agrees to indemnify and hold the other party harmless for any claim, injury, or damage arising out of or connected with the actions of such other party in connection with any activity contemplated by this Agreement. Each party agrees to maintain public liability insurance coverage during the term of this Agreement with coverage in an amount recommended by the party's insurance carrier.

15. TERMINATION PROVISIONS

This Agreement may be terminated at any time by either party giving written notice to the other party of its intent to terminate this Agreement, which notice shall be given not less than ninety (90) days prior to termination.

16. ASSIGNMENT

Neither party hereto may assign this Agreement or any interest therein without first obtaining the written consent of the other party. Any attempt to assign any right or privilege

connected with this Agreement without the prior written consent of the other Party shall be void.

17. APPROVAL BY RESOLUTION

This Agreement shall not be effective until approved by Resolution of the governing body of each party and filing of duplicate originals with the official keeper of records of each party.

18. ENTIRE AGREEMENT

The parties hereto agree that this document, along with the attached Memorandum of Understanding, contain the entire agreement and understanding between the parties and constitute their entire agreement and supersede any and all oral representations and agreements made by either party prior to the date hereof and is binding upon the successors of the respective parties.

19. APPROVAL OF AGREEMENT BY AUTHORIZED ATTORNEY

As required by UCA § 11-13-9, prior to and as a condition precedent to this Agreement's entry into force, it shall be submitted to an authorized attorney who shall approve the Agreement upon finding that it is in proper form and compatible with the laws of the State of Utah.

20. DISPUTE RESOLUTION

The parties agree to make good faith efforts in resolving any dispute arising out of or in relation to this Agreement. In attempting to resolve any disputes, _____ shall be involved.

Should the parties be unable to resolve a dispute and the services of an attorney be required to enforce this Agreement, the defaulting party agrees to pay reasonable attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto have signed this Interlocal Cooperation Agreement the day and year first above written, pursuant to authority granted by Resolution duly passed and adopted by the School District and the CITY.